

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

STEWART TITLE GUARANTY COMPANY, Plaintiff,	)	
	)	
v.	)	Civil Action No. 04-10783-GAO
	)	
UBS PRINCIPAL FINANCE LLC, et al., Defendants.	)	
	)	
	)	
CHICAGO TITLE INSURANCE COMPANY, Plaintiff,	)	
	)	
v.	)	Civil Action No. 05-10046-GAO
	)	
BSC GROUP, INC., et al., Defendants.	)	
	)	

**ANSWER OF BSC GROUP, INC. AND BSC COMPANIES, INC. TO THE FIRST AMENDED  
CONSOLIDATED COMPLAINT, AFFIRMATIVE DEFENSES AND JURY DEMAND**

The defendants, BSC Group, Inc. and BSC Companies, Inc. (collectively, “BSC”), hereby respond to the ***First Amended Consolidated Complaint*** (the “Consolidated Complaint”) of Stewart Title Guaranty Company (“Stewart”) and Chicago Title Insurance Company (“Chicago”) paragraph by paragraph as follows:

To the extent any response to the plaintiffs' introductory paragraph to the Consolidated Complaint is necessary, BSC denies the allegation that BSC was negligent and caused the plaintiffs to incur damages.

1. BSC is without knowledge or information sufficient to admit the allegations contained in paragraph 1 of the Consolidated Complaint.

2. BSC is without knowledge or information sufficient to admit the allegations contained in paragraph 2 of the Consolidated Complaint.

3. BSC admits the allegations contained in paragraph 3 of the Consolidated Complaint.

4. The allegations contained in paragraph 4 of the Consolidated Complaint contain legal conclusions to which no response is required.

5. The allegations contained in paragraph 5 of the Consolidated Complaint contain legal conclusions to which no response is required.

6. BSC admits the allegations contained in paragraph 6 of the Consolidated Complaint.

7. BSC admits the allegations contained in paragraph 7 of the Consolidated Complaint.

8. BSC admits preparing a plan with the title alleged in paragraph 8 of the Consolidated Complaint, but is unable to verify that the attached exhibit is a true and accurate copy of such plan do to the reduction of the copy.

9. BSC admits preparing a plan with the title alleged in paragraph 9 of the Consolidated Complaint, but is unable to verify that the attached exhibit is a true and accurate copy of such plan do to the reduction of the copy.

10. BSC admits preparing a plan with the title alleged in paragraph 10 of the Consolidated Complaint, but is unable to verify that the attached exhibit is a true and accurate copy of such plan do to the reduction of the copy.

11. BSC admits preparing a plan with the title alleged in paragraph 11 of the Consolidated Complaint, but is unable to verify that the attached exhibit is a true and accurate copy of such plan do to the reduction of the copy.

12. BSC admits preparing a plan with the title alleged in paragraph 12 of the Consolidated Complaint, but is unable to verify that the attached exhibit is a true and accurate copy of such plan do to the reduction of the copy.

13. BSC states that the certification speaks for itself and deny the allegations contained in paragraph 13 of the Consolidated Complaint to the extent they are inconsistent with the certifications.

14. BSC states that the certifications speak for themselves and deny the allegations contained in paragraph 14 of the Consolidated Complaint to the extent they are inconsistent with the certifications.

15. BSC states that the certifications speak for themselves and deny the allegations contained in paragraph 15 of the Consolidated Complaint to the extent they are inconsistent with the certifications.

16. BSC denies the allegations contained in paragraph 16 of the Consolidated Complaint.

17. BSC is without knowledge or information sufficient to admit the allegations contained in paragraph 17 of the Consolidated Complaint.

18. BSC is without knowledge or information sufficient to admit the allegations contained in paragraph 18 of the Consolidated Complaint.

19. BSC denies the allegations contained in paragraph 19 of the Consolidated Complaint.

20. BSC is without knowledge or information sufficient to admit the allegations contained in paragraph 20 of the Consolidated Complaint.

21. BSC denies the allegations contained in paragraph 21 of the Consolidated Complaint.

22. BSC denies the allegations contained in paragraph 22 of the Consolidated Complaint.

23. BSC is without knowledge or information sufficient to admit the allegations contained in paragraph 23 of the Consolidated Complaint.

24. BSC is without knowledge or information sufficient to admit the allegations contained in paragraph 24 of the Consolidated Complaint.

25. BSC denies the allegations contained in paragraph 25 of the Consolidated Complaint.

26. BSC denies the allegations contained in paragraph 26 of the Consolidated Complaint.

27. BSC denies the allegations contained in paragraph 27 of the Consolidated Complaint.

28. BSC denies that its surveys were inaccurate or that the certifications were false, and is without knowledge or information to admit or deny the remaining allegations contained in paragraph 28 of the Consolidated Complaint.

29. BSC is without knowledge or information sufficient to admit the allegations contained in paragraph 29 of the Consolidated Complaint.

30. BSC denies that its surveys contained errors, and is without knowledge or information to admit or deny the remaining allegations contained in paragraph 30 of the Consolidated Complaint.

31. BSC is without knowledge or information sufficient to admit the allegations contained in paragraph 31 of the Consolidated Complaint.

32. BSC is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 32 of the Consolidated Complaint.

33. BSC is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 33 of the Consolidated Complaint.

34. BSC is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 34 of the Consolidated Complaint.

35. BSC is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 35 of the Consolidated Complaint.

36. BSC is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 36 of the Consolidated Complaint.

37. BSC is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 37 of the Consolidated Complaint.

38. BSC is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 38 of the Consolidated Complaint.

### **COUNT I**

39. BSC reasserts its responses to paragraphs 1 through 38 of the Consolidated Complaint as if fully set forth herein.

40. BSC admits that part of its services include land surveying.

41. It is BSC's understanding that Chicago and Stewart provide title insurance to various entities.

42. BSC denies the allegations contained in paragraph 42 of the Consolidated Complaint.

43. BSC denies the allegations contained in paragraph 43 of the Consolidated Complaint.

44. BSC is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 44 of the Consolidated Complaint.

45. BSC is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 45 of the Consolidated Complaint.

46. BSC denies the allegations contained in paragraph 46 of the Consolidated Complaint.

47. BSC denies the allegations contained in paragraph 47 of the Consolidated Complaint.

48. BSC denies the allegations contained in paragraph 48 of the Consolidated Complaint.

49. BSC denies the allegations contained in paragraph 49 of the Consolidated Complaint.

## **COUNT II**

50. BSC reasserts its responses to paragraphs 1 through 49 of the Consolidated Complaint as if fully set forth herein.

51. BSC denies the allegations contained in paragraph 51 of the Consolidated Complaint.

52. BSC denies the allegations contained in paragraph 52 of the Consolidated Complaint.

53. BSC denies the allegations contained in paragraph 53 of the Consolidated Complaint.

54. BSC denies the allegations contained in paragraph 54 of the Consolidated Complaint.

### **COUNT III**

55. BSC reasserts its responses to paragraphs 1 through 54 of the Consolidated Complaint as if fully set forth herein.

56. BSC denies the allegations contained in paragraph 56 of the Consolidated Complaint.

57. BSC denies the allegations contained in paragraph 57 of the Consolidated Complaint.

### **COUNT IV**

58. BSC reasserts its responses to paragraphs 1 through 57 of the Consolidated Complaint as if fully set forth herein.

59. BSC admits the allegations contained in paragraph 59 of the Consolidated Complaint.

60. BSC denies the allegations contained in paragraph 60 of the Consolidated Complaint.

61. BSC denies the allegations contained in paragraph 61 of the Consolidated Complaint.

62. BSC denies the allegations contained in paragraph 62 of the Consolidated Complaint.

**COUNT V**

63. BSC reasserts its responses to paragraphs 1 through 62 of the Consolidated Complaint as if fully set forth herein.

64. BSC is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 64 of the Consolidated Complaint.

65. BSC denies the allegations contained in paragraph 65 of the Consolidated Complaint.

66. BSC is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 66 of the Consolidated Complaint.

67. BSC denies the allegations contained in paragraph 67 of the Consolidated Complaint.

68. BSC denies the allegations contained in paragraph 68 of the Consolidated Complaint.

69. BSC denies the allegations contained in paragraph 69 of the Consolidated Complaint.

70. BSC denies the allegations contained in paragraph 70 of the Consolidated Complaint.

**COUNT VI**

71. BSC incorporates and reasserts its responses to paragraphs 1 to 70 of the Consolidated Complaint as if fully set forth herein.



72. BSC denies the allegations contained in paragraph 72 of the Consolidated Complaint.

73. BSC denies the allegations contained in paragraph 73 of the Consolidated Complaint.

74. BSC denies the allegations contained in paragraph 74 of the Consolidated Complaint.

75. BSC denies the allegations contained in paragraph 75 of the Consolidated Complaint.

### **COUNT VII**

76. BSC incorporates and reasserts its responses to paragraphs 1 to 75 of the Third-part Consolidated Complaint as if fully set forth herein.

77. BSC denies the allegations contained in paragraph 77 of the Consolidated Complaint.

78. BSC denies the allegations contained in paragraph 78 of the Consolidated Complaint.

79. BSC denies the allegations contained in paragraph 79 of the Consolidated Complaint.

### **COUNT VIII**

80. BSC incorporates and reasserts its responses to paragraphs 1 to 79 of the Consolidated Complaint as if fully set forth herein.

81. BSC admits the allegations contained in paragraph 81 of the Consolidated Complaint.

82. BSC denies the allegations contained in paragraph 82 of the Consolidated Complaint.

83. BSC denies the allegations contained in paragraph 83 of the Consolidated Complaint.

84. BSC denies the allegations contained in paragraph 84 of the Consolidated Complaint.

85. BSC denies the allegations contained in paragraph 85 of the Consolidated Complaint.

### **AFFIRMATIVE DEFENSES**

#### **FIRST AFFIRMATIVE DEFENSE**

The Consolidated Complaint fails to state a claim against BSC for which relief can be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

The Plaintiffs' claims are barred by the doctrine of estoppel, waiver and/or unclean hands.

#### **THIRD AFFIRMATIVE DEFENSE**

BSC acted in good faith with respect to its decisions, determinations and other actions performed under the agreements in this action and, therefore, is entitled to immunity from the claims asserted in this action.

#### **FOURTH AFFIRMATIVE DEFENSE**

Chicago Title's claims are barred by the settlement agreement of its subrogors or assignors with Stewart Title.

**FIFTH AFFIRMATIVE DEFENSE**

The Plaintiffs' claims are limited by the limitation of liability clauses in BSC's agreement(s) for services.

**SIXTH AFFIRMATIVE DEFENSE**

If the Plaintiffs were damaged as alleged, which BSC denies, then said damage resulted from the acts and or omissions of persons for whose conduct BSC is neither legally liable nor responsible.

**SEVENTH AFFIRMATIVE DEFENSE**

The claims contained in the Consolidated Complaint are barred, or any damages must be reduced, on account of the contributory negligence of the Plaintiffs and/or their Subrogor(s) and/or assignor(s).

**EIGHTH AFFIRMATIVE DEFENSE**

The claims contained in the Consolidated Complaint are barred by failure of consideration.

**NINTH AFFIRMATIVE DEFENSE**

To the extent that the Plaintiffs have suffered any damages, which BSC denies, the Plaintiffs have failed to mitigate its damages.

**TENTH AFFIRMATIVE DEFENSE**

The Plaintiffs may not recover from BSC as a result of the Plaintiffs' Subrogors' or Assignors' failure to render performance in accordance with contract terms.

**ELEVENTH AFFIRMATIVE DEFENSE**

Stewart's claims are barred by the settlement agreement of its subrogors with Chicago Title Insurance Company.

**WHEREFORE**, BSC respectfully requests that this Court issue an order dismissing the Consolidated Complaint and awarding attorneys' fees and cost incurred in the defense of this action.

**JURY DEMAND**

BSC respectfully demands a trial by jury to the fullest extent permitted by law.

Respectfully submitted by  
BSC GROUP, INC. and  
BSC COMPANIES, INC.,  
f/k/a THE BSC GROUP, INC.,  
by their attorneys,

/s/Nancy M. Reimer  
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September 22, 2005

**CERTIFICATE OF SERVICE**  
I hereby certify that a true copy of the  
above document was served upon the  
attorney of record for each other party  
by mail ~~hand fax~~ on 09-22-05

/s/Nicholas A. Ogden

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